IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CRIMINAL REVISION PETITION NO. 242/2007

LOKESH PANCHOLI & ORS. Vs. STATE OF RAJASTHAN & ANR.

DATE: 28.05.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. A.K. Gupta for the petitioners.
Mr. B.K. Sharma, Public Prosecutor for the State.
Mr. S.R. Surana for the complainant-respondent.

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The instant criminal revision petition under Section 397 r/w Section 401 Cr.P.C. is directed against the order dated 09.02.2007 passed by the Additional District & Sessions Judge No.4, Jaipur City, Jaipur in Criminal Appeal No. 15/2007 whereby the Appellate Court has dismissed the appeal filed by the petitioners against the order dated 11.01.2007 passed by the Additional Civil Judge (Jr. Division) & Judicial Magistrate No.22, First Class, Jaipur City, Jaipur in Case No. 512/2007 granting maintenance and rental amount to the complainant-respondent.

Learned counsel Mr. Gupta appearing on behalf of the petitioners contended that the complainant-respondent Smt. Shailee Sharma filed an application

under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the Act of 2005') stating therein that her marriage took place on 01.12.2001 with petitioner No.1 Lokesh Pancholi and thereafter she gave birth to a daughter namely Mannu on 19.10.2002 who is living with her. Allegations of demand of dowry are there and on 18.12.2003 she was forced to leave the matrimonial house. In such eventuality, the complainant-respondent filed a case under Section 125 Cr.P.C. which is pending and the FIR was also lodged by her under Sections 498-A and 406 IPC.

The main challenge to the impugned order is on the ground that the Act of 2005 came into force w.e.f. 26.10.2006 and prior to enforcement of this Act the complainant-respondent is living separately at her parental house.

Mr. Gupta referred Section 5(1) of the General Clauses Act, 1987 which is reproduced hereunder:-

> **“5. Coming into operation of enactments-**
>
> (1) Where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent-

> (a) in the case of a Central Act made before the commencement of the Constitution, of the Governor-General, and
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> (b) in the case of an Act of Parliament, of the President."

After referring Section 5(1), Mr. Gupta further submits that since the Act of 2005 came into force w.e.f. 26.10.2006 and the incident is prior to the Act of 2005 came into force, therefore, no complaint is maintainable under this Act and the same is liable to be quashed and set-aside.

He also referred Article 20(1) of the Constitution of India which reads as under:-

> "20. Protection in respect of conviction for offences- (1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

In support of his submission that no person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act, Mr. Gupta placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of

Soni Devrajbhai Babubhai Vs. State of Gujarat and others, 1991 Cri. L.J. 3135.

Per contra, learned counsel Mr. Surana appearing on behalf of the complainant-respondent submits that the present revision petition is not maintainable as it is directed against the interim order. It is further contended on behalf of the complainant-respondent that during pendency of the case under Section 125 Cr.P.C., the complainant-respondent is competent to invoke the jurisdiction of the Act of 2005 and the trial Court has only granted Rs. 1000/- as maintenance to the complainant and her daughter and Rs. 1000/- against the rent of house. Mr. Surana further submits that under this Act there is no limitation prescribed. Even the act conducted prior to the Act of 2005 came into force can also be adjudicated upon by the competent Court under the Act of 2005.

I have heard learned counsel for the petitioners, learned Public Prosecutor for the State as well as the learned counsel for the complainant-respondent and have also gone through the impugned order dated 09.02.2007 and 11.01.2007.

Interim order has been passed awarding maintenance of Rs. 1,000/- in favour of the complainant

and her daughter and Rs. 1000/- against the rent of the house, against which the petitioners have preferred an appeal under Section 29 of the Act of 2005 and the same has been dismissed by the Appellate Court vide its impugned judgment dated 09.02.2007 observing that the interim order can be passed under Section 23 of the Act of 2005 by the concerned Magistrate and having considered the provisions of Sections 18, 19, 20 and 21 of the Act of 2005 it was observed that such interim order can be granted.

Be that as it may, without expressing any opinion on the merits of the case, it is not disputed that the interim order has been passed by the trial Court and the appeal is also directed against the interim order which was on the ground that the application/case under Section 125 Cr.P.C. is pending before the Magistrate, therefore, the appeal is not maintainable against the interim order.

The petitioners are having liberty to raise all the legal issues which are raised here in the revision petition before the trial Court and on such eventuality the trial Court shall consider all the legal and just objections which are raised by the respective parties and shall decide the complaint filed by the complainant-respondent on its merit, but in any

case at this stage I do not want to interfere with the impugned order dated 09.02.2007 passed by the Appellate Court and the order dated 11.01.2007 passed by the trial Court.

Consequently, the revision petition fails and the same is hereby dismissed.

The interim order dated 16.03.2007 granted by this Court also stands rejected.

Record be sent back forthwith.

(K.S. RATHORE),J

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